

# **THE LEONARD LETTER**

*September 26, 2005*

## **QUOTE OF THE WEEK**

*“The worth of a state, in the long run,  
is the worth of the individuals composing it.”*

*John Stuart Mill*

*(1806-1873) English philosopher and economist*

## **AROUND THE NATION**

### **\*\*\*American Spirit\*\*\***

Americans cannot be held down. The destructive force of Mother Nature makes us want to rebuild and laugh in the face of disaster. How long do you think it will be before some enterprising bar on Bourbon Street opens up with a double punch special called the Katrina-Rita drink? You heard it here first.

### **\*\*\*Yes, In My Backyard\*\*\***

Last week I encouraged readers to attend a Housing Summit in Ontario. Summit attendees were treated to a review of the situation facing a new homebuyer in California: the median home price is \$540,000; California is home to all of the top ten least affordable housing markets in the nation; just to get to the national average of homeownership rate (68.3%), we need 1.3 million new housing units immediately and that does not begin to cover the 6 million new residents our state will have by 2030. To help spur development of new housing, policymakers were encouraged to simplify the California Environmental Quality Act, find a mechanism other than voter-approved bonds to fund the state's housing trust fund, and reduce fees.

Those recommendations are pretty close to worthless since they have already been tried, but there is something we can all do to help the housing situation. We can fight the urge in ourselves to say “Not in my backyard!” when new housing is proposed. At the summit, CA's Housing Secretary Lucy Dunn, talked about locally elected officials who are “tortured” and “threatened with recall” for even considering approving an apartment complex or new tract of houses. Those threats come from community members who already have their homes and apparently do not want anyone else to have theirs. The challenge is that our children, our police officers, our teachers, our service workers still need housing options, and if we do not allow housing to be built, they will have to move elsewhere or crowd more than one family into existing homes. I am particularly troubled when I hear about otherwise conservative voters taking the NIMBY

approach. We must stand up for up for our children, for property rights, for the principles on which this nation was founded by saying, yes, build in my backyard.

### **\*\*\*Guestimating\*\*\***

At this writing, the death toll from Katrina exceeds 1000. That is a tragedy, made even more devastating by the knowledge that many of those deaths could have been prevented by more effective evacuation procedures. What strikes me about this figure though, is that it is so much lower than the initial predictions were. I heard people on news broadcasts suggesting that the death toll could reach 10,000. It reminded me of similar speculations on 9/11. Such wild inaccuracies demonstrate several points. First, live news coverage, 24-hours a day, struggles to provide accurate information all the time. Sometimes the right answer to a news anchor's questions is, "I don't know." But those words are rarely spoken in the real world, much less in the virtual world. Second, government officials have no magic means of predicting or projecting. Consider the coverage you see of rallies at the state capitol. News articles about such events often include the CHP's estimate of how many people attended the rally. And the CHP's "official" estimate often differs considerably from the number given by the group hosting the event. I once asked the CHP how they reached their estimates. Once they took an aerial photograph of a rally and counted the bodies. They use that as an example and then make a guess based on how crowded the lawn looked compared to that picture. Not exactly science, but sometimes good "news."

### **\*\*\*A Convert's Heart\*\*\***

Candidates for elected office put themselves out there for public scrutiny. People look at their job history, education, community involvement and even personal relationships to judge a candidate's fitness to serve. When you are seeking a party's nomination for office, you are also evaluated by active party members on other criteria: your commitment to the party, how long you have been an active volunteer, how much money you have given to the party, etc. Those are fair questions to ask someone seeking to represent the party, but a political party must also find a way to welcome and embrace converts to its cause. Indeed, one of a party's biggest goals is to persuade people that its philosophy is superior to the alternatives so that people will join up. The challenge party activists face is this: how do you judge the sincerity of a convert's heart? I suggest we should judge political converts in the same way we do religious converts: take them at their word, look at how their lives and behaviors are changing based on their stated beliefs, and welcome them with open arms in the fullness of the cause.

## **TAX NOTES**

### **\*\*\*The Spirit of the Law\*\*\***

The Board of Equalization is being sued because of a 3-2 vote. I hope we lose. The majority narrowly applied the letter of the law and ignored the legislative intent. I was in the minority in believing that health facilities should not be charged sales tax for insulin syringes and supplies that they used to treat diabetic patients. Sales tax law says that such items are exempt from sales

tax only if they are supplied directly to the patient. Does the BoE think the facility eats these supplies? Common sense says the end user is the diabetic patient, even if a pharmacist at a health facility touches them first. Although three members of the Board do not agree with that view, I hope that the court sees the logic and refunds the money.

### **\*\*\*Fees Versus Taxes\*\*\***

Is there a difference between fees and taxes? Historically, fees are government charges for services received by the feepayer, while taxes provide no special benefit to the taxpayer. Now, the Legislature, the courts, and the Board of Equalization have conspired to blur the distinction.

When the voters passed Proposition 13, they amended the California Constitution to require a two-thirds vote for tax increases. Then the Legislature got clever and began calling all new taxes “fees” and adopting them by majority vote. In the Sinclair Paint decision, the California Supreme Court opened Pandora’s Box by permitting these so-called “majority vote tax increases” by allowing a tax to be considered a fee even when there is no benefit to the feepayer as long as they spent the money on a specific program.

In a recent decision, the majority on the Board of Equalization allowed the Department of Health Services (DHS) to stretch the Sinclair Paint decision to the breaking point. A paint company that has never produced any lead paint was forced to pay a “regulatory fee” to mitigate the damage caused by the lead paint it never produced. DHS claimed the company had failed to prove that it did not produce lead paint because it did not provide enough documentation from 1912 and subsequent years, but it seemed clear that NO AMOUNT of documentation would meet the impossible standard that DHS had established for an exemption from the fee. The official DHS position, as upheld by the Democrat majority on the Board of Equalization, is that the constitutionally-required nexus between the feepayer and the alleged damage to be mitigated can simply be presumed to exist in all cases, regardless of the facts or lack thereof.

If the Board of Equalization’s decision is allowed to stand, I doubt the Legislature will ever need to adopt another tax increase. Instead, they will just pass a series of “fee” increases by majority vote. They will not need to worry about the nexus requirement because it will be presumed in every case.

## **MISCELLANY**

### **\*\*\*A Good Read\*\*\***

Last week many American schoolchildren paused to recognize Constitution Day. In many schools that included a recitation of the Preamble. I applaud that effort, but it is barely the beginning of young people understanding the uniqueness and importance of the values of their nation. A book published in the nation’s bicentennial year did an impressive job of laying out what makes our country special: “The American Ideal of 1776: Twelve Basic American Principles” by Hamilton Abert Long. I list the 12 principles here and encourage you to find this book and remind yourself of the import of each of them: 1) The spiritual is supreme; 2) fear of

government-over-man; 3) unalienable rights—from God; 4) man organizes governments to be his tools; 5) limited government; 6) decentralized government; 7) equal, by God's gift, in sight of God and the law; 8) life and the pursuit of happiness; 9) liberty—against government-over-man; 10) private property—liberty's support; 11) taxes—limited to safeguard liberty; and 12) the majority—limited for liberty.

## **BOE AND LEGISLATIVE DATES**

**October 9, 2005** --- Deadline for Governor to sign or veto all legislation sent to him in 2005.

**October 9, 2005** --- Columbus Day.

**October 10 - November 1, 2005** --- Voters may apply for absentee ballots for the November 8th special election.

**October 18, 2005** --- BoE meets with County Assessors in Monterey.

**October 18, 2005** --- Last day for sample ballots to be mailed to all voters who were registered by September 9<sup>th</sup>.

**October 24, 2005** --- Last day to register to vote in the statewide special election.

**October 25, 2005** --- Taxpayers' Bill of Rights Hearing in Sacramento.

**November 8, 2005** --- Statewide special election.

**November 11, 2005** --- Veterans' Day.

**November 24, 2005** --- Thanksgiving Day.

## **NOTABLE DATES/ HISTORY**

**September 26, 1789** --- Appointments were made in the new U.S government: Thomas Jefferson as the first Secretary of State; John Jay as the first chief justice; Samuel Osgood as the first Postmaster; and Edmund J Randolph as the first Attorney General.

**September 26, 1950** --- UN troops in the Korean War recaptured the South Korean capital of Seoul.

**September 26, 1960** --- The longest speech in UN history (4 hrs, 29 minutes) was delivered by Fidel Castro.

**September 27, 1779** --- John Adams negotiated the peace terms of the Revolutionary War peace with Britain.

**September 27, 1787** --- The Constitution was submitted to the states for ratification.

**September 28, 1781** --- The Siege of Yorktown, the last battle of the Revolutionary War, began.

**September 29, 1963** --- Alabama Governor George Wallace defied order by U.S. District Judge Frank Johnson, an appointee of President Dwight Eisenhower, to integrate Tuskegee High School.

**September 30, 1452** --- The first book was published: Johann Guttenberg's Bible.

**September 30, 1630** --- The first execution occurred in America: J Billington was hanged in Plymouth, MA.

**September 30, 1953** --- Earl Warren (California's three-term Republican Governor, 1948 Republican vice presidential nominee, and Supreme Court Chief Justice) wrote the landmark decision in Brown v. Board of Education.

**October 1, 1890** --- Yosemite National Park was established.

**October 1, 1947** --- The first helicopter air mail and express service began in Los Angeles.

**October 1, 1948** --- The California Supreme Court voided a state statute banning interracial marriages.

**October 2, 1800** --- Birthdate of Nat Turner, leader of major slave rebellion.

**October 2, 1869** --- Birthdate of Mohandas K Gandhi (Mahatma Gandhi) in Porbandar Kathiawad India.

## **GENERAL TAX INFORMATION**

For answers to your general tax questions, call the Board of Equalization information center. Customer service representatives are available to help you from 8:00 a.m. to 5:00 p.m. Pacific time, Monday through Friday (except state holidays).

Toll-free number: 800-400-7115  
TDD service for the hearing impaired  
TDD phones: 800-735-2929  
Voice phones: 800-735-2922

To reach the Taxpayer Rights Advocate's office for assistance with any BOE issues, see <http://www.boe.ca.gov/tra/tra.htm>, or call toll-free 1-888-324-2798.

## **HOW TO CONTACT ME**

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